

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

| | | |
|---------------------------|---|------------------|
| HECTOR BIENVENIDO ARIAS, |) | |
| Petitioner |) | CIVIL ACTION NO. |
| |) | 05-10684-MLW |
| v. |) | |
| |) | |
| UNITED STATES OF AMERICA, |) | |
| Respondent |) | |
| |) | |

**Government's Motion To Extend Time
Within Which To File Its Response To
Petitioner's Motion Under 28 U.S.C. § 2255**

The United States of America, by Michael J. Sullivan, United States Attorney, and Michael J. Pelgro, Assistant U.S. Attorney, hereby files this motion to extend the time within which to file its response to the petitioner's motion under 28 U.S.C. § 2255. The government requests that the Court extend the time to November 28, 2005.

In support of this motion, the government states as follows:

1. In May 2002, the petitioner pleaded guilty to an indictment, Criminal No. 01-10056-MLW, charging him with conspiracy to distribute heroin and, in September 2002, he was sentenced by this Court to 168 months' imprisonment and 5 years' supervised release. The petitioner filed a direct appeal and the Judgment was affirmed summarily by the Court of Appeals in June 2004.

2. On or about April 4, 2005, the petitioner filed a motion under 28 U.S.C. § 2255 to vacate his sentence. The petitioner has raised a conclusory claim of ineffective

assistance of his former attorney during sentencing as well as claims under the Booker and Blakely decisions. On October 14, 2005, the Court entered an Order requiring the government to file a response to the petition.

3. The government needs additional time to review the transcripts of the Rule 11 and sentencing hearings (the Court conducted several days of evidentiary hearings in connection with the sentencing of the petitioner and his several co-defendants) and to prepare an opposition to the petition.

4. The undersigned government counsel is heavily involved in other multiple-defendant narcotics investigations and cases as well as in supervisory and administrative duties within the U.S. Attorney's Office. In addition, the undersigned government counsel has just returned to the office after being out of state on government business from November 1, 2005 through November 4, 2005.

The government therefore respectfully requests that the Court extend the time within which the government is to file its response to November 28, 2005.

Respectfully submitted,

MICHAEL J. SULLIVAN
United States Attorney

By: /s/ Michael J. Pelgro
Michael J. Pelgro
Assistant U.S. Attorney

DATED: November 7, 2005.

CERTIFICATE OF SERVICE

This is to certify that I have this day served upon the person listed below a copy of the foregoing document by depositing in the United States mail a copy of same in an envelope bearing sufficient postage for delivery:

Hector Bienvenido Arias
Inmate No. 23566-038
FCI Elkton
P.O. Box 10
Lisbon, OH 44432

This 7th day of November 2005.

s/Michael J. Pelgro
MICHAEL J. PELGRO
ASSISTANT UNITED STATES ATTORNEY